

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P.O. BOX 2508
CINCINNATI, OHIO 45201

DEPARTMENT OF THE TREASURY

Person to Contact:

Contact Telephone Number:

Refer Reply to:

Date: MAR - 2 2000

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted discloses that you were incorporated under the laws of [REDACTED] on [REDACTED]. Your stated purpose is to be a nonprofit corporation.

Your objectives are to "improve and protect [REDACTED] and the surrounding environs for the benefit of the local community and to conduct those activities necessary to accomplish that goal. These shall include, but are not limited to, the planning, organization and implementation of programs and activities to improve, restore, maintain and protect [REDACTED] located adjacent to [REDACTED] in [REDACTED] and all matters related thereto"

Membership in your organization is limited to any person or entity that owns or controls property that abuts, has legal access to, or is proximate to [REDACTED]. Organizations or entities that represent persons living proximate to [REDACTED] may also be members. Membership is also open to other persons, organizations and entities that desire to support the objectives of [REDACTED] with the approval of the Board of Directors. All private individuals have one vote per property owned. An organization or entity shall have two votes. [REDACTED] is private community and has no public access.

Your income is derived from membership dues and contributions from condominium dwellers in the vicinity of [REDACTED]. Your expenses will consist of aquatic biologists expenses, insurance, aquatic herbicides including grass eating fish, as well as construction materials and supplies.

Section 1.501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, educational and religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet the organization or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose.

Our review of your application indicates that your articles of incorporation do not meet the organization test required to be recognized as tax exempt under section 501(c)(3), since this document does not limit your purposes exclusively to one or more purposes described in this section. In addition, you also have not made any provision for the distribution of your assets to qualified section 501(c)(3) organizations in the event your organization dissolves.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 US 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number of importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or

persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

Your activities are directed at the private community surrounding [REDACTED]. Based on the evidence submitted, we have determined that you have not met your burden of proof to show that you are operated exclusively for an exempt purpose and that you serve the private interests of your members. Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 447 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973).

The issue of private benefit has been the subject of several revenue rulings. For example, Revenue Ruling 61-170, supra, discusses an organization having both a charitable and non-charitable purpose. While nursing the sick was recognized as a charitable activity, the Internal Revenue Service determined that finding employment for nurses bestowed a substantial private benefit on the participating nurses who controlled the organization. Thus, the charitable nature of the activity was undercut by the benefits flowing to private individuals.

In Benedit Ginsberg, 46 T.C. 47 (1966), denied exemption to a nonprofit corporation formed to dredge a navigable waterway fronting the properties of its members. The waterway was little used by the general public but its navigability greatly affected the value of members' properties. Also, evidence showed that the "contributions" came solely from members and were proportionate to the value of their property.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained

[REDACTED]

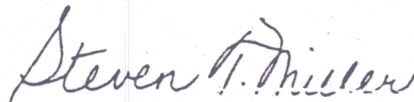
in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Steven T. Miller
Director, Exempt Organizations

Enclosure: Publication 892

cc: State Attorney General [REDACTED]

Internal Revenue Service

Department of the Treasury

Date: APR 17 2001

Employer Identification Number:

Form Number:

Tax Years Ending:

Person to Contact:

Contact Telephone Number:

Contact Person ID#:

90 Day Date: JUL 18 2001

CERTIFIED MAIL

Dear Applicant:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

You have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. You are organized and operated primarily to serve private interests rather than public interests. You are organized and operated for the substantial nonexempt purpose of providing benefits to your members and furthering the private interests of your members which is inconsistent with exemption under section 501(c)(3) of the Internal Revenue Code.

Contributions to your organization are not deductible under Code section 170(c)(2).

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. Processing of income tax returns and assessment of any tax due will not be delayed in the event that you file a petition for declaratory judgment under Code section 7428.

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If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Charles F. Fisher
Team Manager, Appeals

Appeals SB/SE Area 3
Baltimore Appeals Office
31 Hopkins Plaza, Suite 1310
Baltimore, MD 21201